IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/09/2002

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THE HONOURABLE MR.JUSTICE S.JAGADEESAN

SECOND APPEAL NO.824 OF 1992

Rajam Alwar .. Appellant

-Vs-

N.Raju .. Respondent

!For Appellant :: Mr.S.Venkateswaran
for Mrs.Hema Sampath

^For Respondent :: Mr.Alagar, S.C. For
Mr.Y.K.Rajagopal.

Prayer: This Second Appeal is preferred against the decree and judgment dated 18-4-1991 in A.S.No.86 of 1987 on the file of Sub Court, Srivilliputhur.

:JUDGMENT
The defendant in O.S.536 of 1983 on the file of the District Munsif, Srivilliputhur is the appellant herein. The respondent herein filed the above said suit for specific performance of an agreement entered into between the parties dated 4-10-1982, pursuant to the order of eviction by the Rent Controller. The appellant is the landlord and the respondent is the tenant. The appellant-landlord filed RCOP 16 of 1981 to evict the respondent-tenant on the ground of demolition and reconstruction. Subsequently, a compromise was entered into between the parties, wherein, the respondent-tenant agreed to vacate and hand over possession of the premises and the appellant had agreed to let out the portion of the property to the respondent-tenant after completion of the construction at the rate of rent agreed upon therein. Since the appellant in compliance of the terms of the compromise, failed to hand over possession to the respondent-tenant, the suit was laid.
2. The only defence put forth by the appellant was that the suit was not maintainable and it is for the appellant to approach the Rent Controller under Sub Section 2 of Section 16 of the Tamil Nadu Buildings (Lease and Rent) Control Act in order to recover the possession. The trial Court, after considering the issue elaborately, held that the suit is maintainable and the compromise entered into between the parties before Rent Controller is enforceable one and ultimately decreed the suit by judgment dated 31-10-1987.
3. Aggrieved by the same, the appellant preferred an appeal in A.S. No.86 of 1987 on the file of the Sub Court, Srivilliputhur. The lower Appellate Court also concurred with the findings of the trial Court and

dismissed the appeal. Hence the Second Appeal.

4. At the time of the admission, the following substantial questions of law were formulated.

i. Whether the Courts below have not erred in overlooking the fact that the joint endorsement made in RCOP No.16 of 1981 is not specifically enforceable in a Civil Court and that it has to be executed in a Rent Control Court?

ii. Whether the Courts below have not failed to see that the remedy open to the respondent is to go before the Rent Controller under Section 15 of the Tamil Nadu Buildings (Lease and Rent Control) Act and that having failed to do so within the time prescribed, he can be permitted to resort to civil Court?

iii. Whether in law the Courts below have not erred in exercising their discretion in favour of a person who has not come with clean hands and who can be compensated for the alleged injury?

5. It is the contention of the learned counsel for the appellant that the Civil Court has no jurisdiction to enforce the compromise entered into between the parties before the Rent Controller and in order to enforce such terms of compromise, it is for the respondent to go before the Rent Controller under Section 16 of the Act. This is the first ground formulated at the time of the admission.

6. To appreciate the contention of the learned counsel for the appellant, it is necessary to have a look at the provision. Section 16 of the Act is as follows:

"16. Tenants to occupy if the building is not demolished:

(1) Where an order directing delivery of possession has been passed by the Controller under clause (b) of sub-section (1) of section 14 and the work of demolishing any material portion of the building has not been substantially commenced by the landlord within the period of one month in accordance with his undertaking under clause (b) of sub-section (2) of section 14, the tenant may give the landlord notice of his intention to occupy the building the possession of which he delivered. If within fifteen days from the date of receipt of such notice, the landlord does not put him in possession of the buildings on the original terms and conditions, the tenant may make an application to the Controller within eight weeks of the date on which he put the landlord in possession of the building. The Controller shall order the landlord to put the tenant in possession o f the building on the original terms and conditions.

(2) Where in a pursuance of an order passed by the Controller under clause (b) of sub-section (1) of section 14, any building is totally demolished and a new building is erected in its place, all the provisions of this Act shall cease to apply to such new building for a period of five years from the date on which the construction of such new building is completed and notified to the local authority concerned."

7. A mere reading of the above provision as well as the headlines of the provision clearly establish that the tenant not to invoke Section 16 only when the landlord failed to demolish the building after obtaining an order under Section 14(1)(b) of the said Act.

8. Admittedly in the case on hand, the appellant demolished the

building and subsequent to the consent order obtained before the Rent Controller and thereafter, put up the new construction, now the respondent had invoked the jurisdiction of the Civil Court only to enforce the terms of the compromise entered into between the parties and recorded by the Rent Controller in the Rent Control Proceedings. Hence obviously Section 16 of the said Act cannot be of any assistance to the respondent herein. The first substantial question of law is answered against the appellant.

9. The next contention put forth by the learned counsel for the appellant is even if the respondent is not entitled to invoke Section 16 of the said Act, it is open to him to move the Rent Controller under Section 15 of the said Act for the relief of recovery of possession by invoking Section 15 of the said Act.

10. Section 15 of the said Act is as follows:

"15. Tenant to re-occupy after repairs:

(1) Where the landlord recovers possession under clause (a) of sub-section (1) of section 14, he shall, within two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work will be completed. Within fifteen days from the date of receipt of such notice, the tenant shall intimate to the landlord his acceptance of the building offered for his re-occupation and if the tenant gives such intimation, the landlord shall within thirty days from the date of completion of the work of repairs put the tenant in possession of the building on the original terms and conditions. If the tenant fails to give such intimation, his right to re-occupy the building shall terminate.

(2) If after the tenant has delivered possession, the landlord fails to commence the work of repairs within one month from the date of such delivery, or fails to complete the work before the expiry of three months from the date of such delivery, or before the expiry of the further period allowed under clause (a) of sub-section (2) of section 14 or having completed the work fails to put the tenant in possession of the building in accordance with the provisions of sub-section (1), the Controller may, on the application of the tenant made within thirty days from the date of such failure, order the landlord to put the tenant in possession of the buildin g on the original terms and conditions; and on such order being made, the landlord and any person who may be in occupation shall put the tenant in possession of the building."

11. Here also this provision can be invoked only in cases where the landlord obtained the possession of the building from the tenant for effecting certain repairs. Section 15 can be invoked only where the possession is obtained by the landlord unde ction 14(1)(a) of the said Act. Admittedly the appellant did not obtain the possession from the respondent for the purpose of any repairs by invoking Section 14 (1)(a) of the said Act. When the possession was obtained only for the requirement of Section 14(1)(b), Section 15 of the said Act cannot come into operation. Hence this contention of the learned counsel for the appellant also cannot be countenanced and consequently the second substantial question of law is also answered against the appellant.

12. So far as the third substantial question of law is concerned, no argument was advanced by the learned counsel for the appellant. Hence the same is not considered.

13. Moreover, it is admitted by both counsel that after the disposal

of the first appeal by the lower Appellate Court in the year 1991, the respondent has got the possession of the premises and he is continuing the tenancy under the appellant pursuant to the compromise memo entered into between the parties in the RCOP proceedings. The respondent is in occupation of the suit premises for more than a decade. Therefore, there is no scope to interfere with the findings of the Courts below. Hence the Second Appeal is dismissed. No costs. Consequently, C.M.P. is closed.

Index: Yes
Internet : Yes
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S.JAGADEESAN, J.
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To
1.The Sub Judge, Srivilliputhur
2. The Principal District Munsif, Srivilliputhur
3. The Record Keeper, V.R.Section, High Court, Madras.

S.A.NO.824 OF 1992

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